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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/680,839	10/07/2003	Irena Maravic	080465	2991
23596	7590	12/12/2008		
QUALCOMM INCORPORATED			EXAMINER	
5775 MOREHOUSE DR.			PEREZ, JAMES M	
SAN DIEGO, CA 92121				
		ART UNIT	PAPER NUMBER	
		2611		
		NOTIFICATION DATE	DELIVERY MODE	
		12/12/2008	ELECTRONIC	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/680,839

Applicant(s)

MARAVIC ET AL.

Examiner

JAMES M. PEREZ

Art Unit

2611

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 18 November 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Shuwang Liu/
Supervisory Patent Examiner, Art Unit 2611

/James M Perez/
Examiner, Art Unit 2611

Continuation of 11, does NOT place the application in condition for allowance because:

1. Applicant's arguments filed 11/18/2008 have been fully considered but they are not persuasive.
2. On page 3-5, the applicant argues the limitation "sampling the received signal with a sampling frequency lower than the sampling frequency give by Shannon theorem, but greater than the rate of innovation of said received signal for generating a set of sampling values," as stated in the arguments filed on 11/18/2008.
3. The examiner notes that the rate of innovation as disclosed in the instant application (page 5, lines 28-30), the rate of innovation p is defined as the number of degrees of freedom of the signal per unit of time (page 5, lines 28-30).
4. Wherein as stated in the Final Action mailed on 9/19/2008, "Unser teaches the reconstruction of a consistent signal (which yields the same measurements as the original signal) as long as there are as many measurements (samples) as there are degrees of freedom in the signal (Section V, B)."

As stated in the Response to arguments of said Final Office Action, "[o]ne of ordinary skill in the art at the time of the invention would clearly recognize that Unser defines a minimum sampling requirement (Section V, B), and that sampling above the minimum requirements has the benefits of increasing the accuracy of a sampled signal, thus less bit errors in the recovered signal. Said benefits of sampling above the minimum requirements are also well-known and expected in the art.

Further evidence that said benefits of sampling above the minimum requirements are well-known and expected in the art is found in Heminger et al. (US 2002/0054411), paragraph 60, wherein sampling at a rate of 5 times of the minimum requirements (five times over-sampling) increases system accuracy as compared to sampling at a rate of 2 times the minimum requirements (paragraph 60)."

5. The examiner will now further explain the interpretation of teaching reference, Heminger, which is used as evidence that sampling over a minimum rate is well-known and expected in the art at the time of the invention. Heminger, col. 2, paragraph 60, lines 49-60 states, "[w]hile the preferred embodiment is described in terms of five times over-sampling, one skilled in the art will recognize that an even greater over-sampling rate will further increase the likelihood of transmitting a control packet when the beam impinges upon the remote photodetector.... On the other hand, a lesser over-sampling rate (such as two times) would not provide as great a benefit, but would nonetheless increase the chances of transmitting a control packet at the right time."

Wherein it is clearly obvious to one of ordinary skill in the art at the time of the invention that Heminger discloses a benefits of increased sampling accuracy when sampling at a higher rate than a minimum requirement, wherein the sampling accuracy (the benefit) increases as the sampling rate increases (as shown by five times over-sampling vs. two times over-sampling). Furthermore one of ordinary skill in the art at the time of the invention would clearly recognize that Heminger discloses a well-known and expected concept of sampling over a minimum requirement, wherein the benefits of sampling over a minimum requirement obviously apply to any minimum requirement.

6. Therefore, the examiner believes that the rejection of said limitation is proper for the reasons stated in the Final Office Action mailed on 9/19/2008 and as further explained above.

Any arguments not addressed by this Advisory Action are clearly addressed in said Final Office Action..